BLANK
PAGE

Office-Supreme Court, U.S.
FILED
NOV 2 9 1965
JOHN F. DAVIS, CLERK

In The

United States Supreme Court

October 1965 Term

No. 732

In the Matter of
ARNOLD SCHILDHAUS, an Attorney,

Appellant,

v.

THE ASSOCIATION OF THE BAR OF
THE CITY OF NEW YORK,

Appellee,

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

ARNOLD SCHILDHAUS,
Attorney pro se,
320 East 149th Street
Bronx, New York

Martin Lutz Appellate Printers, Inc.
New York • Philadelphia • Newark • New Brunswick

BLANK
PAGE

Index

	Page
Point I. The petitions presented to the Appellate Division were perjured.	1
Point II. A preliminary inquiry is required by New York law.	4
Point III. The purpose of the perjured petitions and the failure to hold a preliminary inquiry was a Cohen v. Hurley inquisition.	4
Point IV. Appellee misstates the facts when it states that the basis of appellant's objection was that the minutes of the substitution were incomplete rather than inaccurate.	5
Point V. Exhibits were fraudulently manufactured by appellee in an elaborate and intricate fraud.	5
Point VI. Appellee does not deny that appellant was denied confrontation and cross-examination; or that the procedures described on pages 21 and 26 of the jurisdictional statement are true and accurate.	7

Cases Cited:

Matter of Roosevelt, 232 A.D. 23	4
Matter of Zanger, 266 N.Y. 165	4
People v. Qualey, 210 N.Y. 202	5
People v. Schildhaus, 186 N.Y. Supp. 2nd 68 ...	3
People v. Schildhaus, 10 Misc. 2d 64	3

Index *Page*

People v. Schildhaus, 8 N.Y. 2d 33 2,3

People ex rel. Schildhaus v. Dros, 14 Misc. N.Y. 126 3

People ex rel. Siegal on behalf of Schildhaus v. Dros, 185 N.Y. Supp. 2nd 21 3

People ex rel. Schildhaus v. Dros, 11 N.Y. 2nd 167 3

Schildhaus v. City of New York, 10 A.D. 2nd 566 . 2

Schildhaus v. City of New York, 8 N.Y. 2nd 1108 . 2

Schildhaus v. City of New York, 7 Misc. 2nd 859 . 2

Schildhaus v. Justices of Court of Special Sessions, 16 Misc. 2nd 675 2

In The

SUPREME COURT OF THE UNITED STATES

October 1965 Term

In the Matter of
ARNOLD SCHILDHAUS, an Attorney,

Appellant,

v.

THE ASSOCIATION OF THE BAR OF
THE CITY OF NEW YORK,

Appellee.

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Appellant, answering the motion to dismiss, respectfully submits this memorandum to clarify the issues presented in this appeal.

Point I

The petitions presented to the appellate division were perjured.

Perjury is defined by New York law (Section 1628, New York Penal Law) as: "an unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false."

In its motion papers, appellee acknowledges the actual receipt of notice that the convictions had been reversed (p. 3 of appellee's motion)§ Appellant claims repeated notice. Repeated notice there was. The reports of the Court of Appeals, the Appellate Division, the Supreme Court and New York Supp. show the following list of convictions reversed or writs of habeas corpus sustained before appellee swore to its first petition in May, 1961. Each of the citations listed relate to alleged convictions set forth in the first petition and sworn to by officers of appellee as existing at the time of the swearing.

In Schildhaus v. City of New York, 10 A.D.2nd 566 (Jan. 1960) a judgment was affirmed for false imprisonment resulting from the sustaining of writs of habeas corpus which by New York law made the convictions a nullity (People v. Schildhaus, 8 N.Y.2nd 33; May 1960). The convictions were sworn to in appellee's petition as outstanding.

Schildhaus v. City of New York, 8 N.Y. 2nd 1108 (Nov. 1960) is the affirmance of the false arrest judgment by the Court of Appeals.

Schildhaus v. City of New York, 7 Misc. 2nd 859 (May 1957) is a long opinion giving the reasons for the judgment for false imprisonment.

Schildhaus v. Justices of Court of Special Sessions, 16 Misc. 2nd 675 (1959) and People ex rel Schildhaus v. Dros, 14 Misc. 2d 126 (1960) dealt with convictions reversed as a result of the decision of the Court of Appeals in People v. Schildhaus, 8 N.Y.2d 33 (1960) which is a leading case in New York. All the convictions are sworn to be appellee as outstanding at the time appellee swore to the first petition.

People ex rel Siegal on behalf of Schildhaus v. Dros. 185 N.Y. Supp. 2nd 21 (1959) dealt with a conviction made invalid when the writ of habeas corpus was sustained (People v. Schildhaus, 8 N.Y. 2nd 33; People ex rel Schildhaus v. Dros, 11 N.Y. 2nd 167). Appellee swore to the convictions as outstanding.

People v. Schildhaus, 186 N.Y. Supp. 2nd 68 (1959) dealt with a conviction that had been reversed and a new trial ordered even though a writ of habeas corpus had been sustained. This was before People v. Schildhaus, 8 N.Y. 2nd 33 made it the law that a sustained writ made the underlying conviction a nullity. Appellee listed the one conviction twice under its old number and the new number it received for the new trial. It swore both convictions were valid and subsisting at the time it swore to the petition.

People v. Schildhaus, 10 Misc. 2nd 64 (1958) dealt with three convictions that had been reversed and new trials ordered. A demurrer to the informations was sustained. They are sworn to in appellee's petition.

To list all the litigation would be fruitless. Abbott's Digest lists many more. Moreover as appellee's own exhibits submitted to this Court show; six of the convictions sworn to by appellee were by their own records false.

Appellee does not deny that the publicity given these cases was tremendous. Press, radio and television gave the public a blow by blow description of the fight between appellant and City Hall. Appellant does not deny that the second petition was sworn to after repeated notice that 13 of its 14 allegations were false (p. 4-5 of appellee's motion; p. 15 jurisdictional statement). Appellee's claim that most of the

convictions were reversed after the petitions were filed. The record shows only three were so reversed after the petitions were filed.

Point II

A preliminary inquiry is required by New York law.

To the discussion on page 24 of the jurisdictional statement, appellant would add only the following. Even if appellee's statement that a perjured petition is enough to justify the disbarment trial of an attorney were true; the petitions assuming arguendo that they were not perjured alleged only offenses and misdemeanors. By New York law, only those convictions of misdemeanors which involve moral turpitude can serve as the basis for disbarment Matter of Zanger, 266 N.Y. 165; Matter of Roosevelt, 232 A.D. 23, 25). Since appellee's first two petitions did not allege or even imply moral turpitude, a preliminary inquiry was mandatory. To put it in other words, the petitions even if not perjured did not state a cause of action.

Point III

The purpose of the perjured petitions and the failure to hold a preliminary inquiry was a Cohen v. Hurley inquisition.

This Court is respectfully referred to pages 13 to 16 of the jurisdictional statement; particularly the sworn affidavit of Mr. Franck, of counsel for appellee, quoted on the bottom of page 15 of the jurisdictional statement.

Point IV

Appellee misstates the facts when it states that the basis of appellant's objection was that the minutes of the substitution were incomplete rather than inaccurate.

On pages 93 and 94 of the stenographic minutes of the hearing before the Referee, the following colloquy took place:

> The Referee: Do you question the fact, Mr. Schildhaus, that if the stenographer were called he would testify that it is a correct transcript.
>
> Mr. Schildhaus: I do sir.
>
> The Referee: Despite the fact that it is certified.
>
> Mr. Schildhaus: Yes, sir. I had a conversation with Mr. Nargi (the stenographer) and Mr. Nargi --
>
> The Referee (interrupting): I will receive the document.

By the code of criminal procedure of the State of New York, section 221 b, without proof of the certification by the stenographer and by the justice of magistrate who held the examination, the minutes were not admissible (People v. Qualey, 210 N.Y. 202).

Point V

Exhibits were fraudulently manufactured by appellee in an elaborate and intricate fraud.

Appellee claims that there was no fraud in the elaborate fraud described in the jurisdictional state-

ment (pages 18-19) because all the papers were in appellant's handwriting (p. 13 of appellee's brief). The appellee calls the 12 inserted sheets the "disputed" "sheet" (the quotes around "disputed" are appellee's). The Appellate Division, in its opinion concedes that there were "sheets inserted in the loan applications." All of the 12 inserted sheets were undated, incomplete and unsigned.

To prevent appellant from cross-examination and to prevent the appellant from examining the originals, the originals were never introduced in evidence. To prevent examination of the fraudulent photo copies (Exhibits 15, 16 and 17) appellant was put on a merry-go-round. Whomever he went to, did not have the exhibits.

Inserted in the loan application of one corporation was the unsigned, incomplete and undated sheet of paper of another corporation, Emray Realty Corp. It was so inserted that unless you had a great deal of time to study it, it defied detection that this was not part of a signed application for a loan. Unless these "inserted sheets" were signed, the Statute of Frauds, the Parol Evidence Rule, the law of contracts and the Banking Law of the State of New York would have forbidden interrogation as to these unsigned pieces of paper; and appellee could not make the argument it makes to this Court which is printed on page 14 of its motion papers.

Without cross-examination and without seeing the exhibits, it was impossible from May 21, 1962 when the photocopies were introduced in evidence until November 19, 1963 when appellant was given a momentary glimpse and discovered the fraud. To prevent cross-examination and the discovery of the fraud after appellee's petition was approved by the

Appellate Division as Charge VI, neither the photo copies or the originals were introduced in evidence.

Why? Besides attempting to prevent the discovery of the fraud that the inserted papers were inserted and unsigned, it was important to prevent the discovery that the inserted papers were not made at the same time as the applications for the loans, If this Court will examine Exhibit 16 in evidence, it will be seen that the corporation applying for the loan is Unity Estates, Inc. and the application is to and on a form of the Royal State Bank. While the unsigned and undated papers inserted in the middle of the application for a loan are of Emray Realty Corp. and the lender and the form used is of Royal Industrial Bank. On June 1, 1954, the Royal Industrial Bank had become the Royal State Bank. The Emray paper was consequently made a long time before the Unity paper was made and signed.

Appellee does not deny the fraud but echoes the Appellate Division which called these frauds "a technical defense" and "sophistry" to establish a superficial justification. This Court is respectfully referred to pages 17 to 22 of the jurisdictional statement for a full discussion of the frauds.

Point VI

Appellee does not deny that appellant was denied confrontation and cross-examination, or that procedures described on page 21 and 26 of the jurisdictional statement are true and accurate.

Respectfully submitted,

Arnold Schildhaus

END